IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 998 OF 2005.

Sudam Balu Deokar. ... Petitioner.

Versus.

Balutai alias Shalan Sudam Deokar
and another. ... Respondents.

Shri A.A.Garge for the Petitioner.

Shri S.V.More, A.P.P. for the Respondent No.1.

Shri Sanjiv Kadam for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 11th October, 2006.

P.C.:

1. Rule. The Advocate for the 1st Respondent waives service. The learned A.P.P. waives service for the 2nd Respondent. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Petitioner is the husband and the 1st Respondent is the wife. An application for maintenance under section 125 of the Code of Criminal Procedure, 1973 was filed by the 1st Respondent in the Court of the Judicial Magistrate First Class. The said application was allowed by order dated 22nd January 2004 by fixing maintenance allowance at the rate of

Rs.700/- per month. A Revision Application was filed by the Petitioner which has been dismissed by the learned Additional Sessions Judge, Karad. The submission of the learned Counsel for the Petitioner is that there was a voluminous documentary evidence available to the Petitioner to show that the marriage of the Petitioner was solemnized on 10th June 1970 with one Malan. He submitted that there were other documents apart from the marriage certificate to show that the marriage between the Petitioner and the said Malan was solemnized on 10th June 1970. He submitted that even assuming that there was a marriage between the Petitioner and the 2nd Respondent, it was solemnised long after Petitioner's marriage with the said Malan and the Petitioner's marriage with the said Malan was never dissolved and therefore, the second marriage was void and the 1st Respondent was not entitled to maintenance allowance in view of the settled legal position.

3. On the last date when this petition was argued, the learned Counsel for the Petitioner submitted that the Petitioner is an Ex-serviceman and for various reasons he could not lead sufficient evidence to substantiate his case as regards his first marriage with Malan. He submitted that the Petitioner was

possessing sufficient documentary evidence. He stated that the Petitioner has deposited the entire arrears payable as per the impugned order in the trial Court. The Petitioner has filed an undertaking which is duly affirmed stating that if order of remand is passed, he will keep on paying the maintenance as fixed by the order dated 22nd January 2004 passed by the trial Court by treating the said order as an interim order during the pendency of the said application.

4. The learned Counsel for the 1st Respondent did not dispute that the amount of arrears has been deposited. He, however, opposed the submission made by the Advocate for the Petitioner for passing an order of remand. He submitted that no interference is called for as the Application for maintenance has been decided on the basis of the primafacie material available before the learned Magistrate.

5. I have considered the submissions. The Petitioner has placed reliance on the letter dated 23rd February 2004 sent by the officer of the Record Section of the Army stating that there is a declaration filed on 3rd February 1971 by the Petitioner stating therein that he married to Malan on 10th June 1970. According to the Petitioner there are other documents which have

came to his possession subsequently showing existence of the said marriage. The Petitioner has deposited the entire arrears of maintenance and has offered to pay the interim maintenance at the rate which is already fixed. The Petitioner is an Ex-serviceman. Considering the facts and circumstances of the case, the Petitioner deserves to be granted an opportunity to lead further evidence. No prejudice will be caused to the 1st Respondent as she will be receiving maintenance at the rate which is already fixed by the learned trial Judge. However, the payment of maintenance will be by way of interim relief. It will be also open for the 1st Respondent to lead further evidence.

6. In view of the above discussion, the petition is disposed of by the following order:

(i) The impugned judgments and orders dated 22nd January 2004 and 18th January 2005 are quashed and set aside and the Criminal Miscellaneous Application No.53 of 1988 is restored to file of the learned Judicial Magistrate First Class, Karad.

(ii) The parties are directed to appear

before the learned Judicial Magistrate First Class, Karad on 27th November 2006 at 11.00 a.m.

(iii) The Petitioner will be entitled to lead further oral and documentary evidence on the aspect of his alleged marriage with Malan. The 1st Respondent will also be entitled to lead further evidence. After considering the evidence which is already on record and further evidence which will be led by the parties, the learned Magistrate will decide the Application filed by the 1st Respondent afresh in accordance with law.

(iv) Till the disposal of the Application for maintenance, the order dated 22nd January 2004 passed by the Judicial Magistrate First Class, Karad directing the Petitioner to pay monthly allowance of Rs.700/- to the 1st Respondent will continue to operate as an interim order.

(v) The 1st Respondent is permitted to withdraw the amounts deposited by the

Petitioner on the basis of the impugned orders. However, the withdrawal of the said amount will be subject to the final outcome of the Application for maintenance.

(vi) The learned trial Judge will decide the Civil Misc. Application No.53 of 1988 as expeditiously as possible and preferably on or before 31st July 2007.

(vii) All contentions of the parties on merits of the case are kept open.

(viii) Rule is made partly absolute in the above terms.

(ix) Writ of this order be sent immediately.

Judge.